A

DAUD ABDUL KADIR

v.

MALAYSIAN AIRLINES SYSTEM BHD

B

HIGH COURT MALAYA, KUALA LUMPUR
TEE AH SING J
[SUIT NO: S5: 22-625-2001]
23 OCTOBER 2008

C ***LABOUR LAW:*** *Employment - Dismissal - Allegation of unlawful and unjust dismissal - Claim for salary and benefits - Backwages - Whether Industrial Court the proper forum - Whether an abuse of court process for plaintiff to file present claim - Whether plaintiff allowed to succeed in obtaining declaration - Industrial Relations Act 1967, s. 20(1), (1A)*

D The plaintiff had served Malaysian Airlines ('the defendant') for 28 years since July 1972. His last appointment was as Senior Vice President/General Manager Middle East based in Dubai. It was the plaintiff's case that he had been dismissed from Malaysian Airlines and that the dismissal was unjust and unlawful. The E plaintiff was claiming salary of RM21,717 per mensem and all other benefits from 1 July 2000 to 30 June 2001. In other words, the plaintiff was seeking backwages up until his actual retirement which amounted to reinstatement.

F **Held (dismissing plaintiff's claim):**

(1) The proper forum for the plaintiff would have been the Industrial Court. The plaintiff did not seek reinstatement under s. 20(1) of the Industrial Relations Act 1967 from the G Industrial Court within 60 days of his alleged dismissal. This was an abuse of process of court for the plaintiff to file the present claim in order to overcome the strict provision of s. 20(1A) of the Industrial Relations Act 1967. So under s. 20(1) and (1A) of the Industrial Relations Act 1967, there H was a specific provision for the plaintiff to seek for reinstatement. Since the plaintiff had the opportunity to exhaust his avenue to seek redress at the Industrial Court for reinstatement, which he did not, the plaintiff should not now be allowed to succeed in obtaining a declaration that his I dismissal was unfair and unlawful. (para 18)

Case(s) referred to:
Fung Keong Rubber Manufacturing (M) Sdn Bhd v. Lee Eng Kiat & Ors [1980] 1 LNS 156 ***(refd)***
Manggai v. Government of Sarawak & Anor [1970] 1 LNS 80 ***(refd)***

Legislation referred to:
Industrial Relations Act 1967, s. 20(1), (1A)

For the plaintiff - P Jeya Kumar (Nurul Suhana with him); Zahir Jeya & Zainal
For the defendant - T Thavalingam (HC Yong with him); M/s Zaid Ibrahim & Co

JUDGMENT

Tee Ah Sing J:

[1] At the commencement of the trial the Ikatan Pliding was marked as Lampiran 11. Ikatan Dokumen Yang Dipersetujui – authenticity of the documents agreed but subject to cross-examination was marked as Lampiran 10 and Pernyataan Fakta-fakta Yang Dipersetujui was marked as Lampiran 12.

[2] The Isu-Isu Untuk Dibicarakan was marked as Lampiran 13.

[3] The case for the plaintiff is as follows:

Daud bin Abdul Kadir (PW1) who is the plaintiff testified in his examination- in-chief that he has served in Malaysian Airlines ("the defendant") for almost 28 years since July 1972. His last appointment was as Senior Vice President/General Manager Middle East based in Dubai. His terms and conditions of the employment are as stated in pp. 23 to 25 of Lampiran 10. His total last drawn salary was RM21,717.

He was entitled to a company house in Dubai, a driver together with a Mercedes Benz.

On 29 March 2000 he arrived in Kuala Lumpur in order to attend a meeting on 30 March 2000.

He was informed of this meeting around 27 or 28 March 2000.

PW1 was further examined as follows:

Q: What transpired at the meeting on 30.3.2000?

A: I had a meeting with the Executive Vice President (Corporate name of the Executive Vice President (Corporate Affairs) is Dato Abdullah Zaid. The name of the Executive Vice President (Airline) is Dato Basir Ahmad. During the meeting Dato Abdullah Zaid told me that my previous application for a transfer to Kuala Lumpur has been cancelled by the then Chairman of the Airline Tan Sri Tajuddin Ramli. Instead according to Dato Abdullah Zaid the Chairman wanted me to leave the station (my posting in Dubai) and in fact Dato Abdullah Zaid said the Chairman wanted me to leave the Airline.

Q: What was your reaction?

A: I was shocked and speechless.

Q: Did you ask Dato Abdullah Zaid for the reason of the Chairman's directive?

A: Yes, I did. He replied in fact the Chairman had wanted Dato Abdullah Zaid to instruct me to leave even earlier then the 29.3.2000. When I pressed further for the actual reason eventually Dato Basir replied that the Chairman was not happy that he had to authorize some payments amounting to RM500,000.00 and another sum of RM467,000.00 in order to terminate MAS General Sales Agent in Jeddah called Trans Orient.

Q: Did Dato Basir and Dato Abdullah terminate your services?

A: Yes.

Q: How was this carried out?

A: Dato Abdullah mentioned that I should just give a 3 months notice of early retirement and just come back to Kuala Lumpur and stay at home for the duration of that 3 months notice. He also advised me this was the same advice given to another Senior Executive in the Company who is similarly asked to leave the company by the then Chairman Tan Sri Tajuddin Ramli.

Q: What did you do subsequently?

A: Under that situation I prepared the letter of optional retirement as advised by Dato Abdullah Zaid.

Q: Please look at page 35 of Lampiran 10. Is this the letter you are referring to?

A: Yes.

Q: Please look at pages 26 and 27 of Lampiran 10. What is this document?

A: This document is a letter, which I wrote to Dato Basir outlining all the requests from the General Sales Agent in Jeddah who the Company has directed me to terminate their services with Malaysia Airlines. This letter also incorporates the management views on the request made by the General Sales Agent in Jeddah.

Q: What was the total claim by the General Sales Agent in Jeddah?

A: The total claim was in excess of RM2 Million.

Q: Please look at page 28 of Lampiran 10. What are these documents?

A: The top one was the message sent to me from Encik Izam who was the manager responsible for General Sales Agent in Malaysia Airlines. He has authorized me to pay the General Sales Agent in Jeddah based on the reconsideration that I put forward in pages 26 and 27 of Lampiran 10. The bottom one was my massage to Dato Basir advising him that I have already advised the General Sales Agent in Jeddah of our response to their claims, I also indicated there they feel very strongly on their claims of back dated office rental Saudi Riyals 467,550, and full good will payment of Saudi Riyals 1 million.

Q: Please look at pages 29 to 31 of Lampiran 10. Can you explain this document?

A: This document was a copy of the letter from Manager GSA Encik Izam to the Chairman Tan Sri Tajuddin Ramli seeking his final approval for payment to the General Sales Agent Jeddah.

Q: What was the approval sought by Encik Izam?

A: Approval sought was 1 million Saudi Riyal as good will payment and Saudi Riyal 467,000 back office rental.

Q: What is the full name of Encik Izam?

A: I recall his full name Ismail Izam.

Q: Please look at pages 32 to 34 of Lampiran 10. What is this document?

A: This document is the same letter written by Encik Ismail Izam to the Chairman with a note that the Chairman called him at approximately 4 o'clock in the evening, Monday 20th March 2000 and has given his approval to proceed as recommended in the letter written by Encik Ismail Izam to him (the Chairman).

Q: What was the payment eventually made to the General Sales Agent in Jeddah?

A: The final payment that I offered to the General Sales Agent in Jeddah was the Saudi Riyal 1 million goodwill payment but I with held the amount of Saudi Riyal 467,000.00 for the back dated office rental as a saving to the company based on judgment that they were not strongly looking for that payment.

Q: Prior to your meeting on 30.3.2000 did the company fore warn you of the event that were to take place?

A: No. In fact around 1 month before the meeting when Dato Basir was in Dubai for a meeting with me he gave me a very positive indication that he would strongly recommended me for the transfer to Kuala Lumpur as Senior Vice President (Ground Service) due to my extensive experience in operational and staff relationships.

Q: In your 28 years of service what was your record with the company?

A: I feel that I have had a clean and positive record in the company.

Q: Prior to your dismissal how long did you have before you were to retire?

A: I only have another 15 months.

Q: Did you receive any termination benefits or retirement benefits?

A: I was denied the opportunity of purchasing the company car which has been the practice in the company from day one.

Q: What happened to you as a result of this dismissal?

A: Of course I felt a deep sense of disappointment and also embarrassed.

Q: Please look at page 35 of Lampiran 10. When did you tender this letter?

A: I eventually tendered this letter on 2nd or 3rd April 2000.

Q: How was this tendered?

A: I gave to the Secretary of the Senior Vice President Human Resources Mr. Khoo Ewe Phung.

Q: Why did you tender this letter to the Secretary of the Senior Vice President Human Resources?

A: I tendered this letter after having another meeting with Dato Basir and Dato Abdullah and they have confirmed in MAS then there is no way you can meet the Chairman and appeal on that decision.

Q: What did you do after tendering this letter?

A: I did on my own initiative made an appointment to see the then Chairman Tan Sri Tajuddin Ramli and I met him around the 2nd week of June 2000 and appealed for his magnanimity to reconsider his decision having served and given the best part (witness sobs)

Q: Please continue with your answer?

A: So, I appealed to him to reconsider his decision based on the number of years that I have given the company and particularly in the handing of the termination of the General Sales Agent in Jeddah. I have acted in the best interest of the company. As a matter of fact, I have further saved the company almost amounting to half a million ringgit been the mandate for me to pay the General Sales Agent which I withheld from them. In spite of that they, have agreed to the company's offer and subsequently there was a smooth transition from them handling MAS to another agent which the company subsequently appointed. And the then Chairman's reply to my pleading was anyway "it's all over but I will speak to them". Then he escorted me out of the office.

Q: Who did the then Chairman refer to when he told you "I will speak to them".

A: Definitely it was Dato Abdullah Zaid and Dato Basir Ahmad.

Q: Did you receive any response from the then Chairman, Dato Abdullah Zaid or Dato Basir Ahmad after that?

A: Approximately 2 or 3 days after my meeting with the then Chairman, Dato Abdullah told that I had met the Chairman and his response to my pleadings. Dato Abdullah confirmed that Tan Sri Tajuddin Ramli did call him to mention about my meeting with him. Dato Abdullah was just waiting for further directive from the Chairman and he assured me he would definitely contact me if necessary. However subsequently to that I did not hear anything more from Dato Abdullah, Dato Basir and Tan Sri Tajuddin.

Q: Please look at page 36 of Lampiran 10. What is this document?

A: This is an advice to me on the currency fluctuation allowance payable to me on a monthly basis from January 2000 to 31.3.2000 which was RM1,499.00 per month.

Q: Please look at pages 37 and 38 of Lampiran 10. What is this document?

A: This was an acceptance letter from the company to the forced retirement letter which I submit that is at page 35 of Lampiran 10.

Q: Please look at page 39 of Lampiran 10. What is this document?

A: This is to inform me about my annual increment effective 1.4.2000 which was increased to RM15,435.00 per month.

Q: Can you confirm that you receive this letter subsequent to your forced retirement?

A: Yes, I did.

Q: You had earlier informed this Court concerning the advice by the Executive Vice President during your meeting on 30.3.2000 that another Senior Executive in the company was similarly asked to leave the company by the then Chairman Tan Sri Tajuddin, who is the Senior Executive?

A: I vaguely remember his name is Encik Zaki Vice President of the Catering Department.

Q: Please look at pages 40 and 41 of Lampiran 10. What is this document?

A: This was an appeal letter I wrote to Dato Abdullah on 15.1.2001 after the change of top management in the company, ie, there was a New CEO and a new Chairman.

Q: What was your appeal?

A: My appeal was for an appropriate compensation for the forced retirement that I had to take from the previous Chairman.

Q: Please look at page 42 of Lampiran 10. What was the Defendant's response?

A: Their response was they were considering my case and will revert to me in a few weeks time after obtaining the management endorsement.

Q: Did the company reject your appeal out right?

A: The company did not reject my appeal out right.

Q: Did you follow up with the Defendant after a few weeks?

A: Yes, I did. I contacted Dato Abdullah Zaid and Tuan Haji Yusof, the Senior Vice President Human Resources.

Q: What did Dato Abdullah Zaid and Tuan Haji Yusof say to you when you contacted them?

A: Dato Abdullah Zaid informed me that he has directed Tuan Haji Yusof, the Senior Vice President Human Resources to prepare a management paper giving the options available to the company. Firstly to reappoint me in my previous position as a Senior Vice President or to pay me the balance of my salaries until my due retirement date or to pay me minimum of 1 month salary for every year of service that I have given to the company.

Q: Please look at page 43 of Lampiran 10. What is this document?

A: This document was to inform me that my request for the compensation was not granted.

Q: When was this letter issued?

A: 24.5.2001.

Q: Who issued this letter on behalf of the Defendant?

A: It was the Senior Vice President Human Resources Tuan Haji Yusof.

Q: Who was this letter copied to?

A: Dato Abdullah Zaid.

Q: What did you do after this?

A: I accepted the decision and pursued with legal action.

Q: I refer you to Lampiran 11. Please look at page 16 of the statement of claim. What are the relief that you are seeking from this Court?

A: No. 1, a declaration that my dismissal was unjust and unlawful. No. 2, damages of RM260,604.00 being salary due to me up to my retirement age. No. 3, damages of DH's 72,000,00 being the overseas station allowance due to me up to retirement age. No. 4, Exemplary damages against the company for their unlawful acts. No. 5, further and/or in the alternative RM912,114.00 being termination benefits of 1 1/2 months salary for each year of service. No. 6, further and/or in the alternative damages against the company to be assessed by the Honorable Court. No. 7, interest or any amount found due at such rate and for such period as the Court deems fit. No. 8, Costs. No. 9, Such further or other relief that this honorable Court shall deem fit.

In cross-examination PW1 was asked as follows:

Q: When you ceased employment with the Defendant you agree that you were holding position of Senior Vice President/ General Manager Middle East?

A: Yes.

Q: Prior to your posting to the Middle East, can you confirm that you were the Senior Vice President of the Human Resource Department based in Kuala Lumpur?

A: Yes.

Q: As Senior Vice President Human Resource you were in fact the head of the Human Resource Department of the Defendant?

A: Yes.

Q: And as head of Human Resource you are familiar with the Defendant's Human Resource policies and procedures?

A: Yes.

Q: How long were you in Human Resource? A

A: Approximately 6 years.

In cross-examination PW1 was also asked as follows:

Q: During the first meeting you agree that you were informed that the Chairman was unhappy with your performance? B

A: I disagree.

Q: You further agree that you in fact speculated that the Chairman was unhappy due to your handling of the General Sales Agent termination in Jeddah? C

A: I did not speculate that.

Q: My instructions are that Dato Seri Basir and Dato Abdullah informed you about the Chairman's unhappiness with you and had requested you to speak to the Chairman to discuss the issues? D

A: No.

Q: In respect of the 2nd meeting I am instructed that it was you who called Dato Seri Basir and Dato Abdullah to met you? E

A: Yes.

Q: My instructions further that during this meeting you wanted to discuss the options of leaving? F

A: No.

Q: Then why did you call for the 2nd meeting?

A: I discussed about the possibility of appealing to the Chairman's decision. G

Q: What decision by the Chairman?

A: Based from the first meeting with Dato Abdullah and Dato Basir, Dato Abdullah has clearly told me that my transfer to Kuala Lumpur is cancelled, the Chairman wants me to leave the station and in fact he wants me to leave the company. H

Q: Why did you not see the Chairman directly?

A: During the 2nd meeting Dato Basir informed me that in the environment of the company there was no way I could see Chairman on this matter. I

Q: Did you on your own try to see the Chairman?

A: As I gave in the previous evidence, I did take the initiative to see him and I eventually met him around 2nd week of June 2000, just before the due date of the resignation.

Q: I refer you to page 35 of enclosure 10. You are the author of this letter?

A: Yes.

Q: It is dated 30.3.2000?

A: Yes,

Q: From this letter when would your last day of service be?

A: 30.6.2000.

Q: So you saw the chairman before 30.6.2000?

A: Yes.

Q: The choice of words in this letter are yours?

A: Yes.

Q: In your first paragraph of the letter you have stated that you will be entitled to 84 days accrued leave. Where did you obtain this information from?

A: I recall checking with the Human Resource.

Q: In the final paragraph of your letter you confirm that you thanked the management and staff for all the support given to you?

A: Yes.

Q: When did you hand this letter to the Defendant?

A: I recall 2 days after writing the letter.

Q: You confirm that you carbon copied to Dato Seri Basir and Dato Abdullah?

A: Yes.

Q: You confirm that this letter does not request for compensation?

A: Yes.

Q: Do you agree with me that during the course of the 2nd meeting you had meet Dato Seri Basir and Dato Abdullah. At this meeting you requested for additional compensation early retirement?

A: Yes.

Q: My instructions are that Dato Basir and Dato Abdullah never made any promises for compensation to you?

A: They could not confirm anything.

Q: As a former Senior Vice President Human Resources you are aware that there is no contractual obligation on the part of the Defendant to pay any employee compensation for early retirement?

A: Yes, under normal circumstances.

Q: I refer you to enclosure 10 page 36. You agree that after you tendered your letter at page 35 you enjoyed the currency fluctuation allowance?

A: No.

Q: Then what is this letter at page 36 all about?

A: This was for the allowance January 2000 to 31.3.2000, when I was still working

Q: I refer you to page 39 of enclosure 10. After your letter at page 35 you agree that the Defendant gave you an annual increment with effect 1.4.2000 where your salary was increased to RM15,435.00 per month?

A: Yes.

Q: I refer you to pages 37 and 38 of enclosure 10. Can you confirm receipt of this letter?

A: Yes.

Q: Did you challenge the content of this letter?

A: No.

Q: Can you confirm that as of April 2000 you knew what you would receive upon your early retirement?

A: Yes.

Q: I refer you to pages 40 to 41 of enclosure 10. Please tell the Court the date of this letter?

A: 15.1.2001.

Q: You agree that this is more than 8 months since you opted for early retirement through your letter at page 35 of enclosure 10?

A: Yes.

Q: You agree that is this letter dated 15.1.2001 you are appealing for some compensation payment from the Defendant?

A: Yes.

Q: I refer you to paragraph 1 of page 40 of enclosure 10. You state that you were forced to retire. I put it to you this allegation is a mere after thought on your part?

A: No.

Q: Looking at this letter at pages 40 and 41 of enclosure 10, did you make any reference to your meeting with the Chairman of the Defendant which you claimed you had in June 2000?

A: No.

Q: Do you agree that your meeting with the Chairman was before the effective date of your resignation ie, 30.6.2000?

A: Yes.

Q: So you could have withdrawn your letter at page 35 enclosure 10 after your meeting with the Chairman?

A: I discussed with the Chairman. He merely said he will discuss my appeal with them.

Q: Do you agree you did not withdraw your letter at page 35 of enclosure 10 after meeting the Chairman?

A: Yes.

Q: You agree that Dato Seri Basir and Dato Abdullah Mat Zaid have no power to terminate your services?

A: They have no powers.

Q: I refer you to enclosure 11 at page 16 in particular prayer No. 5, which is RM912,114.00 being termination benefits. Please tell us how did you arrive at such a compensation?

A: That was based on termination benefits of 1 1/2 months salary for each year of service.

Q: It is provided for under your contract of employment?

A: There was no full terms of service given to Senior Vice President but this was derived as an indication based on terms for Senior Managers in the Company.

Q: Can you show us any documents providing for such payments?

A: I don't have it.

Q: Retirement benefits are they stipulated in your contract?

A: Yes.

Q: Please show us where?

A: I don't have it.

Q: Is it in any of the bundles of documents before this court?

A: I don't have it because we were only given the appointment letter as Senior Vice President.

Q: I refer you to enclosure 11 pages 15 and 16 under prayer 17 item 4, the right to purchase a Mercedes Benz E220 at book value. Can you show us which part of your contract provided for this?

A: This was the practice by the company from day one for Directors who leave the company under normal circumstances. Although it is not stated in this appointment letter.

Q: Do you have any document to show the existence of such practice?

A: No.

Q: I refer you to page 15 again enclosure 11 prayer 17 item 2. Overseas station allowance. Do you agree with me that you will only be entitled to this payment if you are actually based overseas?

A: Yes.

Q: When did you last stopped going to work?

A: I cannot remember but it would be the day I left my office in Dubai to return to Kuala Lumpur for good.

Q: I refer you to pages 37 and 38 of enclosure 10. Can you confirm that the Defendant honored all its obligations here?

A: Yes.

Q: I refer you to page 16 enclosure 11 paragraph 18, you alleged that you continue to suffer ridicule and embarrassment. Do you agree with me that your optional retirement letter at page 35 of enclosure 10 is only addressed to 3 people Mr. Khoo Ewe Phung, Dato Seri Basir and Dato Abdullah Mat Zaid?

A: Yes.

PW1 was re-examined as follows:

Q: You were asked this question as a former Senior Vice President Human Resources you are aware that there are no contractual obligations on the part of the Defendant to pay any employee compensation for early retirement. Your answer was "Yes under normal circumstances." My question to you was your early retirement under normal circumstances?

A: No.

Q: Is there an obligation on the part of the Defendant to pay compensation to you for your, early retirement in the given circumstances?

A: I feel so.

Q: You were referred to page 35 of enclosure 10 and asked on whether you withdraw this letter after meeting the Chairman. You had agreed that you did not withdraw this letter. My question is why did you not withdraw this letter?

A: Knowing the personality of the Chairman Tan Sri Tajuddin Ramli, there has been 2 instances where he would force Senior People to leave the company.

Q: I refer you to the enclosure 11 pages 15 and 16 in particular prayer 5 – RM912,114.00 being termination benefits of 1 1/ 2 months salary for each year of service you have informed this Court that this .derived on the benefits payable to Senior Managers of the company. You have however informed the Court that you don't have the documents proving for such payments. My question is who has these documents?

A: The company has the documents.

Q: You were also asked a question on your right to purchase a Mercedes Benz E220 at book value. And you answered that it is the practice of the company from day one for Directors who leave the company under normal circumstances although it is not stated in the appointment letter. Can you inform the Court based on your knowledge the instances in which this practice was carried out by the Defendant?

A: It was given to the previous Director of Personnel who retired from the company and other directors in the previous years.

Q: You were also asked a question on your letter at page 35 of enclosure 10 wherein you had agreed that the letter at page 40 was issued more than 8 months since you opted for early retirement. My question to you is did you opt for early retirement on your own accord?

A: No.

[4] The case for the defendant is as follows:

Dato' Abdullah bin Mat Zaid (DW1) has testified in his examination-in-chief that in the year 2000 he was the Executive Vice President Corporate Services of the defendant. He retired in November 2001. Page 22 of Lampiran 10 is the letter signed by him. This letter is to inform the plaintiff of his transfer to Dubai.

He recalled having a meeting with the plaintiff sometime in March 2000 in Kuala Lumpur together with Dato Seri Basir Ahmad (DW2). The purpose of the meeting was to inform the Plaintiff of the Chairman's decision about the plaintiffs employment in the company. The Chairman Tan Sri Tajuddin Ramli wanted him (the plaintiff) to be dismissed. At the meeting DW1 and DW2 communicated the Chairman's decision to the plaintiff.

He (DW1) believed no decision was made as the plaintiff was surprised and needed time to think about it.

A At this meeting he (DW1) and DW2 did not instruct the plaintiff to resign or opt for early retirement.

DW1 was also examined as follows:

B Q: After this meeting did you have the opportunity to meet the plaintiff again on the same issue?

A: Yes, there was a 2nd meeting which was held at the lobby of the MAS Hotel at Kelana Jaya.

C Q: Who were present at this 2nd meeting?

A: I believe the 3 of us again.

Q: You recall what transpired at this 2nd meeting?

D A: He asked us the reason for Chairman's decision. And we asked him to see the Chairman himself.

Q: Would you be aware whether he saw the Chairman?

A: I don't know if I may add he said that he preferred to deal with both of us.

E Q: I refer you to page 35 of enclosure 10. Were you copied this letter from the Plaintiff seeking optional retirement?

A: Yes.

F Q: Please indicate from this letter where your name or designation appears?

A: The 2nd name in the c.c. copy.

Q: Do you recall when you received this letter?

G A: From the date shown on this letter it is 3.4.2000.

Q: Did you in anyway persuade the Plaintiff to optfor early retirement?

H A: No.

Q: Do you recall whether this letter at page 35 of enclosure 10 was accepted by the Defendant Company?

A: Yes.

I Q: I refer you to pages 37 and 38 of enclosure 10. Was this letter copied to you?

A: Yes.

Q: I refer you to pages 40 and 41 of enclosure 10. Do you recall receiving this letter dated 15.1.2001 from the Plaintiff? A

A: Yes it was addressed to me.

Q: At the time this letter is dated was the Plaintiff still in the service of the Defendant Company? B

A: His last day of service in the company was 30.6.2000. And this letter is dated 15.1.2001. Therefore he was no longer in the service of the company.

Q: I refer you to paragraph 4 of page 40 of enclosure 10 the last line which reads "You finally proposed that I submit an application for early retirement giving 3 months notice effective 1.4.2000". Do you agree with this statement? C

A: No. I don't.

D

DW1 was cross-examined as follows:

Q: The Defendant company initially planned to transfer the plaintiff from Dubai to Kuala Lumpur, do you agree?

A: Yes. E

Q: And this plan must necessarily be premised on the fact that the Defendant company required the services of the Plaintiff in Kuala Lumpur?

A: When he was informed of the transfer he must also have been informed of the position that he was going to take up in Kuala Lumpur. F

Q: Therefore the Defendant company required the services of the plaintiff in Kuala Lumpur, do you agree?

G

A: Yes, at that point in time.

Q: Would you agree that based on this plan for his transfer of service to Kuala Lumpur the Plaintiff would likely continue his services with the Defendant company until his retirement the following year. H

A: I disagree.

Q: And this plan for the transfer of the plaintiff to Kuala Lumpur was subsequently cancelled by the Defendant company, do you agree? I

A: Yes.

Q: Did the Defendant company offer any reasons for such cancellation?

A: I can't recall that.

Q: You testified that the then Chairman wanted the Plaintiff to be dismissed. Did you ask the Chairman the reasons for his directive?

A: No. As the Chairman had already mentioned that he is was about the handling of the GSA.

Q: In terms of hierarchy you and Dato Sri Basir Ahmad are at the helm of the company after the then Chairman?

A: There were 4 Executive Vice Presidents in the company and we all reported directly to the Chairman.

Q: The 4 of you (Executive Vice President) must have an interest or say in the running of the Defendant company?

A: We all are not just the 4 of us but every body in the company.

Q: Do you concern with the decision of the then Chairman who wanted the plaintiff to be dismissed?

A: It is not a question for me to concern. My instruction was to communicate that decision to the Plaintiff and for the Plaintiff was asked by Dato Sri Basir and I to go and see the Chairman.

Q: It appears that the then Chairman govern the Defendant company with an iron fist.

A: I do not know what you mean by iron fist.

Q: I put it to you that you were merely following orders and did not have a say in the Chairman's decision that the plaintiff be dismissed?

A: As a loyal subordinate I always followed the instruction of all my supervisors.

Q: Do you agree that the then chairman was not satisfied with the Plaintiff's handling of the GSA issue in Jeddah?

A: It appears obviously so.

Q: Why was the then chairman dissatisfied?

A: I don't know.

Q: Are you aware that the Defendant company in particularly the then Chairman had approved a mandate of Saudi Riyal 1 million plus a further Saudi Riyal 467,000 in respect of office rental for the Plaintiff to resolve the GSA?

A: No.

Q: Do you know that the Plaintiff resolved the matter amicably with the GSA in Jeddah and only offered Saudi Riyal 1 million as compensation and saved the Defendant company. Saudi Riyal 467,000?

A: I don't know.

Q: I refer you to pages 32, 33 and 34 of enclosure 10. Please look at page 34. This is a summary of the registered mandate, do you recall this mandate?

A: I was not given a copy of this document.

Q: You have informed this Court that you only conveyed the then Chairman's decision to the Plaintiff. I put it to you that this is a veiled threat that the Plaintiff was faced with the threat of dismissal by the Defendant company?

A: The decision were communicate to him was very clear.

Q: What was very clear?

A: That the Chairman wanted him to be dismissed from the company.

Q: You must therefore agree that the plaintiff was faced with a threat of dismissal?

A: The instructions given to the Plaintiff was quite specific and we asked him to go and see the chairman.

Q: You are one of the 4 Executive Vice Presidents who had just received the then Chairman's directive you and another Executive Vice President conveyed the Chairman's instructions to the Plaintiff. In the circumstances do you agree that the Plaintiff was faced with no other option but the threat of dismissal?

A: He has choices, one to accept the instruction and not to accept the instructions, we did not prevent him from taking the matter straight up and talk to the Chairman, in fact we would have been very happy if he had done that. The other choice that he had would be to challenge the Defendant

A Company. If you want to dismiss me go ahead. I am sure that the plaintiff is aware of his choices. He had been in the company for a long time as long as I was, for more than 20 years and also having been in HR division for a long time.

B Q: It is your testimony "so if you want to dismiss me go ahead". Is not this the threat of dismissal that was faced by the Plaintiff.

A: No. I think that you have misunderstood me. I was only trying to cite choices and options that one can take. I am sorry if that is not a good way or polite way of saying.

C

In cross-examination DW1 stated that both the plaintiff and he (DW1) had both served the defendant for more then 20 years.

D He agreed that the plaintiff is a man of integrity. He also agreed that the plaintiff had an impeachable record of services.

DW1 was further cross-examined as follows:

Q: You have informed this Court of the Chairman's decision. E My question is why did not the Defendant issue letter to the Plaintiff in this regard?

A: It is not as simple. Once the letter of charge is issue to an employee as per the company's disciplinary procedure then we would have to go all through. But before proceeded with F that we met the Plaintiff and informed him of the Chairman's decision. If the plaintiff had denied then to challenge the decision of the Chairman's he could have said carry out with the disciplinary proceedings.

G Q: In this case there is clearly no charges of a disciplinary nature against the Plaintiff?

A: Because the Plaintiff had decided to resign.

Q: What were the charges that the Defendant would have imposed on the Plaintiff? H

A: As the Plaintiff choose to resign the company did not prefer any charges against him.

DW1 was re-examined as follows:

I Q: When you met the Plaintiff to communicate the Chairman's decision was the Plaintiff given the option to see the Chairman to discuss the matter further?

A: I believe I answered this question. We gave him the option to see the Chairman.

Q: Are you aware whether the Plaintiff saw the Chairman?

A: I am not sure.

Q: Are you aware whether there was a letter of dismissal issued to the Plaintiff?

A: No.

Q: I refer you to enclosure 10 page 35. My question is looking at this letter was the Plaintiff dismissal or did he opt the early retirement?

A: The wording of this letter shows that the plaintiff opted for early retirement.

Q: Do you as Executive Vice President possess the power to dismiss the Plaintiff?

A: No.

Q: Is there a procedure in place to dismiss employees in the company?

A: As I mentioned earlier during cross-examination there is still a company disciplinary procedure for all employees.

Dato Seri Bashir Ahmad bin Abdul Majid (DW2) testified in examination-in-chief that in the year 2000 he was the Executive Vice President Airlines of the defendant. He knows the plaintiff. He was copied the letter at p. 35 of Lampiran 10. He was not in any way involved in the drafting of that letter. Prior to that letter he recalled having met the plaintiff twice. At the first meeting those present were the plaintiff, Dato Abdullah (DW1) and himself (DW2).

DW2 was further examined as follows:

Q: Do you recall what was discussed at this first meeting?

A: At this first meeting I recall that this meeting was called to inform the Plaintiff that we have been asked by the then Chairman of Malaysia Airlines to inform the Plaintiff that the then Chairman had instructed us to inform the Plaintiff that the then Chairman would like him to leave the company.

Q: Did you at any material time during the course of this 1st meeting threaten or force the plaintiff to opt for early retirement?

A: No.

Q: There was a 2nd meeting. Can you tell the court at whose instance that this meeting come about?

A: To my recollection the 2nd meeting was at the request of the Plaintiff.

Q: Can you please tell who were present at this 2nd meeting?

A: There were 3 of us, the Plaintiff, Dato Abdullah and myself.

Q: Do you recall what was discussed at the 2nd meeting?

A: At the 2nd meeting the Plaintiff discussed the possibility of him taking an optional retirement.

Q: Did you at the 2nd meeting threaten or force the Plaintiff to opt for early retirement?

A: No.

Q: I refer you to page 35 of enclosure 10. Can you confirm that the 2nd meeting that you referred earlier were before this letter dated 30.3.2000?

A: Yes.

Q: I refer you to pages 40 and 41 of enclosure 10. Do you recall receiving this letter from the Plaintiff?

A: Yes.

Q: Was the plaintiff still in service with the Defendant at the time this letter was dated?

A: No.

Q: I refer you to page 40 paragraph 4 of enclosure 10. My question is did you propose to the Plaintiff to submit an application for early retirement giving 3 months notice effective 1.4.2000?

A: No.

Q: After your 2 meetings with the Plaintiff are you aware that the Plaintiff had in fact met the then Chairman of the Defendant or the matters discussed?

A: Not to my recollection.

Q: In your capacity as Executive Vice President Airline do you have the power to dismiss the Plaintiff?

A: No.

Q: Do you also possess the power to negotiate terms on behalf of the Defendant for the Plaintiff's early retirement?

A: No.

Q: What was your personal relationship with the Plaintiff during his tenure with the Defendant?

A: Very cordial.

Q: Did you at any material time prohibit the Plaintiff from seeing the then Chairman to discuss the plaintiff employment with the Defendant?

A: No.

DW2 was cross-examined as follows:

Q: Do you recall that sometime in February of 2000 you were in Jeddah with the Plaintiff?

A: I cannot remember. I could have.

Q: My instructions are that you were very much involved regarding the general sales agent affairs?

A: Only for a very short while.

Q: I refer you to pages 26 and 27 on enclosure 10. Can you confirm that this memorandum of the plaintiff was sent to you?

A: Yes.

Q: Can you confirm that this memorandum was in respect of the termination of the General Sales Agent Trans Airline Travel?

A: Yes.

Q: My instructions are that you are well aware of the claims that the Defendant had to bear in respect of the termination of the General Sales Agent?

A: To the extend that it is stated in this letter.

Q: I refer you to page 28 of enclosure 10. Did you receive this transmission?

A: It was copied to me.

Q: I refer you to pages 29 to 31 of enclosure 10. Can you refer in particular to page 31. Can you confirm that this memorandum was copied to you?

A: Yes.

Q: What was the claim by the General Sales Agent?

A: As per this letter. It says Saudi Riyal 1.467 million.

Q: Would you agree that the plaintiff negotiated with Trans Orient Travel and reduced their claim of 1.467 million Saudi Riyal?

A: Can I seek clarification. You mention 1.467 million compared to?

Q: Can you refer to page 28 of enclosure 10 wherein it is stated that 500,000. Saudi Riyal was paid to Trans Orient Travel.

A: Yes.

Q: Would you then agree that the plaintiff negotiated with Trans Orient Travel in the reduction of their claim of 1.467 million Saudi Riyal to a goodwill payment of merely 500,000.00 Saudi Riyal?

A: Can I seek a clarification when you referred to page 28 there is a stamp which states 9 of March but the memorandum on page 32 is dated 17th March. So I am unclear where is the comparison because on page 28 there is a figure of 500,000 and another figure of 1.467 million subsequent to the telex of 8th March.

Q: You informed having received the telex and memorandum?

A: Yes.

Q: My instructions are that the General sales Agent claimed from the Defendant the sum of 1.467 million Saudi Riyal as documented at the pages referred to earlier do you agree with this?

A: Yes.

Q: At the end of the day the Defendant merely paid a goodwill payment of 500,000 Saudi Riyal, do you agree? A

A: The sequences is not right. I am trying to understand these pages. If on page 28 a sum of 500,000 was paid as settlement but then on a letter date on page 34 the sum of 1.467 million still appears. What I am trying to understand is that if the payment of 500,000 was already agreed on 8th of March but on 17th of March there is a letter requesting approval for 1,467 million Saudi Riyal. B

Q: Would you agree that the termination of the General Sales Agent was resolved amicably? C

A: Resolved yes but amicably I am not in a position to comment.

Q: But you have knowledge that the termination of the General Sales Agent was resolved? D

A: Yes.

Q: Why are you not in a position to comment on whether the resolution concerning the termination of the General Sales Agent was amicable? E

A: Because I am not aware what constitute an amicable resolution.

Q: At the time of the termination of the General Sales Agent you were then the Executive Vice President Airline for the Defendant? F

A: Yes.

Q: This would be a very high position in the Defendant would you agree? G

A: Yes.

Q: As you have mentioned that an Executive Vice President Airline would not be in a position to comment on the resolution of the termination of the General Sales Agent who then would in a position to comment? H

A: I presume it would be the Chairman himself.

Q: Are you saying that the Chairman only had a say in the running of the Defendant? I

A: There is a difference in running the company and the decision making process.

Q: Why can't you comment on whether the termination of the General Sales Agent was amicable?

A: Because it involves a contract and its is up to the finance division and the legal department to advice whether it is an amicable solution.

Q: Did the termination of the General Sales Agent result in any legal proceedings?

A: Not that I am aware of.

Q: I put it to you that the termination of the General Sales Agent was resolved amicably?

A: I disagree.

Q: I also put it to you that the amicable solution in respect of the termination of the General Sales Agent was due to the Plaintiff?

A: I have to state I am not in a position to say whether it was amicable or not but the Plaintiff was involved in the resolution of the case.

Q: I put it to you that in this resolution the Plaintiff successfully negotiated on behalf of the Defendant which resulted in savings of 467,000 Saudi Riyals?

A: I have no evidence here to confirm what was the final settlement.

Q: Do you have any complaint regarding the plaintiff's resolution of the termination of the 'General Sales Agent?

A: I am not in a position to complaint or not complaint as the decision on the resolution does not lie with me.

Q: The Plaintiff did report to you directly?

A: Administratively yes.

Q: In light of the fact that you were then the Plaintiff's immediate supervisor did you have any complaint regarding the Plaintiff's handling of the termination of the General Sales Agent and its resolution?

A: On the handling I have no complaint but again on the resolution I am not in a position to complaint or not to complain.

Q: You can confirm however that the total sum of 1.467 million Saudi Riyals was sought by the General Sales Agent?

A: Yes.

Q: Can you also confirm that there was an approval to pay Saudi Riyals 1.467 million to the General Sales Agent?

A: As per page 32 of enclosure 10 there is a notation the approval was given.

Q: Do you agree that there were plans initially for the Plaintiff's transfer to Kuala Lumpur from Dubai?

A: Yes, there were some attentive discussion as part of the rotation of Area Managers which is done from time to time.

Q: In fact the Plaintiff was supposed to take the position of Senior Vice President Ground Services?

A: There was no conformation on that.

Q: I am instructed that you had discussion with the Plaintiff on the planned transfer from Dubai to Kuala Lumpur involving the position of Senior Vice President Ground Services?

A: In the course of discussion there was such an exploration of options.

Q: And this plan to transfer the Plaintiff from Dubai to Kuala Lumpur must necessarily involve the Plaintiff being in employment until his retirement the following year?

A: Under normal circumstances yes.

Q: And why was this plan transfer of the Plaintiff subsequently cancelled?

A: Although there was discussion on an exploratory basis as mentioned there was no time set or indicated to such an event to take place or if it would take place at all.

Q: I am instructed that you called the Plaintiff back to Kuala Lumpur for the first meeting?

A: I believe if my memory serves me right it was Dato Abdullah.

Q: And during the 1st meeting you and Dato Abdullah informed the Plaintiff of the Chairman's decision to dismiss the Plaintiff and that both of you are only to convey to the Plaintiff of the finality of the Chairman's decision.

A: I am not sure of the finality of the decision but we were certainly asked to convey the Chairman's instructions that the Plaintiff should leave.

Q: And during the 2nd meeting I am instructed that you informed the Plaintiff that in the environment of the company then there is no way that the plaintiff could see the Chairman on this matter?

A: I am afraid that was not the case.

Q: I am also instructed that you and Dato Abdullah also informed the Plaintiff that you would only discuss how best to implement the directive of the Chairman?

A: That was not the case either.

Q: Do you know of any reason why the chairman wanted the Plaintiff to leave the company?

A: To my knowledge, no.

Q: Would you agree that the Plaintiff had an impeccable record of service during his 28 years in the Defendant?

A: Yes.

Q: Are you aware of any entitlement of Senior Management staff of the Defendant being entitled to purchase the company vehicle at the time of their retirement?

A: There was a specific policy.

Q: I refer you to pages 40 and 41 of enclosure 10 in particular paragraph 4 at page 40. Can you confirm that this letter was addressed to Dato Abdullah Mat Zaid?

A: Yes.

Q: During examination-in-chief learned counsel for the Defendant had asked you whether you proposed to the Plaintiff to submit an application for early retirement whereupon you had answered No. Can you confirm that the statement at paragraph 4 of page 40 which reads "You

finally proposed that I submit an application for early retirement giving 3 months notice effective 1st April 2000" was directed to Dato Abdullah Mat Zaid?

A: In this paragraph 4 it would appear that the Plaintiff was addressing this to Dato Abdullah Mat Zaid.

Q: It is your testimony that you know of no reason why the chairman wanted the Plaintiff who had an impeccable record of service for 28 years to leave the Defendant but nevertheless followed the instructions of the Chairman and conveyed to Plaintiff that the Chairman wanted the Plaintiff to leave?

A: Yes, but in addition on our own volition indicated to the plaintiff in fact encouraged the Plaintiff to see the chairman for a clarification.

Q: You never questioned the Chairman on this directive of his?

A: I did but he did not respond.

Q: And although he did not respond you merely followed his orders?

A: Although he did not respond he repeated that that message be conveyed. This was an instruction from the Chairman of the company himself.

Q: And therefore you complied with the instruction given?

A: Yes.

Q: I put it to you given the environment then in the Defendant you had to comply with Chairman's instructions?

A: As an employee of a company, I would have complied with the instruction of any company Chairman.

Q: Do you agree that both you and Dato Abdullah the Executive Vice President who were supervisor to the Plaintiff complied with the Chairman's directive?

A: As we were duty bound to do.

Q: Naturally the Plaintiff your subordinate was also duty bound to comply with the Chairman's directive?

A: No. We indicated to him that he did not have to.

Q: And how did you indicate this?

A: By encouraging him to see the Chairman himself to seek a clarification.

Q: You mentioned that you questioned the Chairman on his directive but he did not respond. What was your question to the Chairman?

A: I enquired whether we could know the reason for his decision.

Q: Given that there was no reason was the decision of the Chairman that the Plaintiff should leave the defendant justified?

A: There could have been a reason but he did not convey that to us.

Q: I put it to you that by questioning the Chairman on his directive you too are of the view that the decision to have the Plaintiff dismissed to be not justified?

A: I enquired so that I could convey the reason to the Plaintiff.

Q: You had admitted that during the 2nd meeting there was a discussion on the Plaintiff taking an optional retirement. Do you agree that faced with the threat of dismissal the Plaintiff discussed with you the optional retirement?

A: It was discussed at the request of the Plaintiff without any threat being imposed.

Q: You mentioned that there is no threat but nevertheless it is clear an unequivocal that the Plaintiff should leave the Defendant?

A: No not unequivocalable.

Q: Do you agree that it was clear that the Plaintiff should leave the Defendant?

A: The message was merely passed and it was up to the Plaintiff to decide the cause of action that he would like to take.

Q: Do you expect this Court to believe that the then Chairman required not one but 2 Executive Vice Presidents to pass a message to your subordinate?

A: No. We were both were called because of our respective functional responsibilities and we agreed that we should both convey this message.

Q: I put it to you there was no need for a discussion on the Plaintiff's optional early retirement if not for the fact that the Chairman wanted the Plaintiff out?

A: The Plaintiff need not have complied.

In re-examination DW2 was asked as follows:

Q: When questioned by my L/F you informed the Court that the message was merely passed and it was up to the Plaintiff to decide on the cause of action that he would like to take. Do you agree with that the cause of action taken by the Plaintiff there after is reflected at page 35 of enclosure 10 where he opts for optional retirement, expresses the fact that he enjoyed working with the company and thank the management for the support given to him?

A: Yes.

Q: Did the Chairman direct you or Dato Abdullah to dismiss the Plaintiff?

A: The then Chairman directed that he be asked to leave.

Q: Who brought up the optional retirement issue at the 2nd meeting?

A: My recollection the Plaintiff.

Q: Was the plaintiff to your recollection given a choice as to what he wanted to do in respect of his employment where Dato Abdullah and you meet him?

A: Yes.

Q: You were asked during cross-examination about the issue of Senior Management staff being entitled to purchase the company vehicle at the time of their retirement. Was this policy in your respective terms and conditions of employment?

A: No, not to my understanding.

Q: Was this policy subject to any approval?

A: Such policy would have been subject to Board approval.

Q: From your recollection to whom did this policy apply?

A: To my understanding at that point in time to certain divisional heads based in Kuala Lumpur.

Q: Was the Plaintiff a divisional head based in Kuala Lumpur at the time of his optional retirement?

A: No.

[5] The learned counsel for the plaintiff has put in a written submission dated 20 February 2008. The learned counsel for the defendant has put in a written submission dated 4 April 2008. The learned counsel for the plaintiff has put in a written reply dated 12 August 2008.

I have perused all the written submissions. I now deal with the case before me.

[6] The issues to be tried (Lampiran 13) are as follows:

i. Whether the plaintiff's letter dated 30 March 2000 was issued under duress and under the threat of immediate dismissal.

ii. Whether the plaintiff was dismissed by the defendant.

iii. Whether the plaintiff is entitled to the reliefs prayed for.

[7] At the time the plaintiff tendered his letter dated 30 March 2000 for optional retirement (p 35 Lampiran 35 "Letter For Optional Retirement") he was holding the post of Senior Vice President and General Manager Middle East based in Dubai and had another 15 months prior to his retirement. His last drawn salary was RM21,717 per month.

[8] Prior to tendering the Letter For Optional Retirement, the plaintiff had two meetings with DW1 and DW2.

[9] I accept the evidence of DW2 that at the 1st meeting he (DW2) and DW1 informed the plaintiff that they (DW1 and DW2) have been asked by the then Chairman of the defendant to inform the plaintiff that the then Chairman would like the plaintiff to leave the company.

[10] DW1 in his examination-in-chief was asked as follows:

...

Q: So at this meeting did you or Dato Seri Basir Ahmad instruct the Plaintiff to resign or opt for early retirement?

A: No.

...

Q: Did you in any way pursued the Plaintiff to opt for early retirement?

A: No

I accept the evidence of DW1 that at the 1st meeting he (DW1) and Dato Seri Basir (DW2) did not instruct the plaintiff to resign or opt for early retirement.

DW2 in examination-in-chief was asked as follows:

Q: Do you recall what was discussed at the first meeting?

A: At the first meeting I recall that this meeting was called to inform the Plaintiff that we have been asked by the then Chairman of Malaysia airlines to inform the Plaintiff that the then Chairman had instructed us to inform the Plaintiff that the Chairman would like him to leave the company.

Q: Did you at any material time during the course of the 1st meeting threatened or forced the Plaintiff to opt for early retirement?

A: No.

...

Q: Do you recall what was discussed at the 2nd meeting?

A: At the 2nd meeting the Plaintiff discussed the possibility of him taking an optional retirement.

Q: Did you at the 2nd meeting threaten or forced the Plaintiff to opt for early retirement?

A: No.

I accept the evidence of DW2 that at the 1st meeting he did not threaten or force the plaintiff to opt for early retirement.

I also accept the evidence of DW2 that it was only at the 2nd meeting that the plaintiff discussed the possibility of him (the plaintiff) taking an optional retirement. I accept the evidence of DW2 that at the 2nd meeting he did not threaten or force the plaintiff to opt for early retirement.

DW2 was cross-examined as follows:

> Q: Do you agree that both you and Dato Abdullah the Executive Vice President who were supervisor to the Plaintiff complied with the Chairman's directive?
>
> A: As we were duty bound to do.
>
> Q: Naturally the Plaintiff your subordinate was also duty bound to comply with the Chairman's directive?
>
> A: No. We indicated to him that he did not have to.
>
> Q: And how did you indicate this?
>
> A: By encouraging him to see the Chairman himself to seek a clarification.

I accept the evidence of DW1 that they (DW1 and DW2) indicated to the plaintiff that the plaintiff need not have to comply with the Chairman's directive to dismiss the plaintiff. I accept the evidence of DW2 that he did not prohibit the plaintiff from seeing the Chairman himself to seek clarification.

[11] In cross-examination PW1 was asked as follows:

Q: I refer you to page 35 of enclosure 10. You are the author of this letter?

> A: Yes.
>
> ...
>
> Q: The choice of words in this letter are yours?
>
> A: Yes.
>
> ...
>
> Q: In the final paragraph of your letter you confirm that you thanked the management and staff for all the support given to you?

A: Yes.

Q: When did you hand this letter to the Defendant?

A: I recall 2 days after writing the letter.

From the plaintiff's own evidence it is clear that he himself wrote the contents of the Letter For Optional Retirement. In the Letter For Optional Retirement the plaintiff did not state that the then Chairman wanted to dismiss him immediately and as such the plaintiff was forced to opt for early retirement.

The plaintiff also did not state in the Letter For Optional Retirement that his optional retirement was involuntary.

The plaintiff has agreed in cross-examination that both DW1 and DW2 have no powers to dismiss the plaintiff.

[12] I find that the plaintiff was not threatened or put under duress of immediate dismissal when DW1 and DW2 first conveyed to the plaintiff the then Chairman's intention to dismiss the plaintiff.

[13] The plaintiff has not adduced any evidence that he was threatened and put under duress of immediate dismissal by the Chairman which compelled him to write the Letter For Optional Retirement.

[14] The plaintiff stated that he tendered the letter For Optional Retirement dated 30 March 2000 on 2 or 3 April 2000. He gave the letter to the Secretary of the Senior Vice President Human Resources Mr. Khoo Ewe Phung.

So the plaintiff has adequate time to consider whether to hand in the Letter For Optional Retirement or not.

On 2 or 3 April 2000 when the plaintiff tendered the Letter For Optional Retirement there were no threats of "resign or be sacked" hanging over his head. The Letter For Optional Retirement was drafted and signed by the plaintiff voluntarily.

[15] In examination-in-chief the plaintiff was asked as follows:

Q: Please look at pages 40 and 41 of Lampiran 10. What is this document?

A: This was an appeal letter I wrote to Dato Abdullah on 15.1.2001 after the change of top management in the company, ie, there was a New CEO and a new Chairman.

Q: What was your appeal?

A: My appeal was for an appropriate compensation for the forced retirement that I had to take from the previous Chairman.

In cross-examination the plaintiff was asked as follows:

Q: I refer you to pages 40 to 41 of enclosure 10. Please tell the Court the date of this letter?

A: 15.1.2001.

Q: You agree that this is more than 8 months since you opted for early retirement through your letter at page 35 of enclosure 10?

A: Yes.

Q: You agree that in this letter dated 15.1.2001 you are appealing for some compensation payment from the Defendant?

A: Yes.

Q: I refer you to paragraph 1 at page 40 of enclosure 10. You state that you were forced to retire. I put it to you this allegation is a mere after thought on your part?

A: No.

Q: Looking at this letter at pages 40 and 41 of enclosure 10, did you make any reference to your meeting with the Chairman of the Defendant which you claimed you had in June 2000?

A: No.

Q: Do you agree that your meeting with the Chairman was before the effective date of your resignation ie, 30.6.2000?

A: Yes.

Q: So you could have withdrawn your letter at page 35 of enclosure 10 after your meeting with the Chairman?

A: I discussed with the Chairman. He merely said he will discuss my appeal with them. A

Q: Do you agree you did not withdraw your letter at page 35 of enclosure 10 after meeting the Chairman?

A: Yes. B

From the aforesaid it is clear that the plaintiff met the then Chairman of the defendant before the effective date of his early retirement on 30 June 2000.

The plaintiff in his evidence did not state that he did raise the issue of his threatened and immediate dismissal by the then Chairman which forced him to send the Letter For Optional Retirement with the then Chairman at the meting. After meeting with the Chairman the plaintiff could have withdrawn the Letter For Optional Retirement. However the plaintiff did not withdraw the Letter For Optional Retirement. Further from 1 April 2000 till 30 June 2000 there is no evidence adduced such as contempronous documents to show that the plaintiff has asserted his allegation that he was threatened and forced with immediate dismissal and thus he has no choice but to tender the Letter For Optional Retirement. Paragraph 1 of the letter dated 15 January 2001 (at p. 40 of Lampiran 10) reads "I wish to take this opportunity to once again appeal to the management to reconsider my request for an appropriate compensation due to me on account of my force retirement recently which was under duress and under threat of immediate dismissal." C D E F

I am of the view that the allegation of "on account of my force retirement recently which was under duress and under threat of immediate dismissal" are mere after thoughts. G

[16] In respect of the 1st issue to be tried, ie, whether the plaintiff's letter dated 30 March 2000 was issued under duress and under the threat of immediate dismissal, the answer is in the negative. H

[17] In respect of the 2nd issue to be tried, ie, whether the plaintiff was dismissed by the defendant, the answer is in the negative as the plaintiff voluntarily tendered the Letter For Optional Retirement. The plaintiff has not adduce any cogent evidence that he was faced with the threat of immediate dismissal by the defendant. I

[18] Section 20(1) and (1A) of the Industrial Relations Act 1967 reads as follows:

> **20. Representations on dismissals**
>
> (1) Where a workman, irrespective of whether he is a member of a trade union of workman or otherwise, considers that he has been dismissed without just cause or excuse by his employer, he may make representations in writing to the Director General to be reinstated in his former employment; the representations may be filed at the office of the Director General nearest to the place of employment from which the workman was dismissed.
>
> (1A) The Director General shall not entertain any representations under subsection (1) unless such representations are filed within sixty days of the dismissal:
>
> Provided that where a workman is dismissed with notice he may file a representation at any time during the period of such notice but not later than sixty days from the expiry thereof.

In para 17.1 of the statement of claim the plaintiff is claiming salary of RM21,717 per mensem and all other benefits from 1 July 2000 to 30 June 2001. In other words the plaintiff is seeking back wages up until his actual retirement which amount to reinstatement. The plaintiff has also prayed for a declaration that the plaintiff was dismissed from Malaysian Airlines and that the dismissal is unjust and unlawful.

So the proper forum for the plaintiff would have been the Industrial Court.

In the case of *Fung Keong Rubber Manufacturing (M) Sdn. Bhd. v. Lee Eng Kiat & Ors.* [1980] 1 LNS 156 His Lordship Raja Azlan Shah CJ (Malaya) said:

> In our view the whole purpose of this part of the legislation is to provide workmen with a cheap and speedy remedy to obtain reinstatement. Quite clearly it would be extraordinarily difficult for employers to keep industry going if claims for reinstatement on the ground of wrongful dismissal could be made many months or years, instead of the statutory period of one month, after dismissal had taken place. Under section 20(1) of the Act, a workman who claims reinstatement for wrongful dismissal is bound to comply with a very strict time limit. He must present his claim within one month of the dismissal. There is no similar

> escape clause as is provided by paragraph 21(4) of Schedule 1 to the (UK) Trade Union and Labour Relation Act, 1974, on the ground that it is "not practicable" to present a claim within the statutory period: see, for instance, *Wall's Meat Co. Ltd. v. Khan* [1979] I.C.R. 52. It is for that special reason that the time-limit clause with no escape clause is inserted in the section. It is so strict that it goes to the jurisdiction of the industrial court to hear the complaint. By that we meant that, if the claim is presented just one day late, the court has no jurisdiction to consider it.

The plaintiff did not seek reinstatement under s. 20(1) of the Industrial Relations Act 1967 from the Industrial Court within 60 days of his alleged dismissal.

I am of the view that it is an abuse of process of court for the plaintiff to file the present claim in order to overcome the strict provision of s. 20(1A) of the Industrial Relations Act 1967.

So under s. 20(1) and (1A) of the Industrial Relations Act 1967 there is a specific provision for the plaintiff to seek for reinstatement.

Since the plaintiff had the opportunity to exhaust his avenue to seek redress at the Industrial Court for reinstatement, which he did not, the plaintiff should not now be allowed to succeed in obtaining a declaration that his dismissal was unfair and unlawful.

In support I rely on the case of *Manggai v. Government of Sarawak & Anor* [1970] 1 LNS 80 where His Lordship Gill FJ (delivering the judgment of the Federal Court) at said:

> It is well settled law that the court sill not make a declaratory judgment where an adequate alternative remedy is available (see *Halsbury's Laws of England,* 3rd edition, volume 22, page 749, paragraph 1611). To quote but a few authorities in support of that proposition, Lord Herschell said in *Barraclough v. Brown* [1897] AC 615, 620.
>
> It was argued for the appellant that, even if not entitled to recover the expenses by action in the High Court, he was, at all events, entitled to come to that court for a declaration that on the true interpretation of the statute he had a right to recover them. It might be enough to say that no such case was made by the appellant's claim. But, apart from this, I think it would be very mischievous to hold that when a party is compelled by statue to resort to an inferior court he can come first to the High Court to

A have his right to recover – the very matter relegated to the inferior court – determined. Such a proposition was not supported by authority, and is, I think, unsound in principle.

In *Pasmore v. The Oswaldtwistle Urban District Council* [1898] AC 387, 394 Earl of Halsbury LC said:

B

> ... The principle that where a specific remedy is given by a statute, it thereby deprives the person who insists upon a remedy of any other form of remedy than that given by the statute, is one which is very familiar and which runs through the law.

C

In the more recent case of *Wilkinson c. Barking Corporation* [1948] KB 721, 724 Asquith LJ said:

> ... It is undoubtedly good law that where a statute creates a right and, in plain language, gives a specific remedy or appoints a specific tribunal for its enforcement, a party seeking to enforce the right must resort to that remedy or that tribunal, and not to others.

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[19] In view of the aforesaid I therefore dismiss the plaintiff's claim with costs to the defendant.

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